

FILED

FEB 28 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLANDUnited States District Court
Northern District of California.Joseph Horne
Petitioner.

v.

Warden Robert Hovel
Respondent.Case NO. 4:07-cv-04592-SBA
"Petitioner's
Application for certifi-
cation of Appealability
from the District
Court; And Statement of
Reason in Support."Introduction

Pursuant to 28 USC §253, Rule 22 FRAP, and Ninth Circuit Rule 22-1, Petitioner, Joseph Horne hereby request that the U.S. District Court issue a certificate of Appealability (hereafter "COA"), permitting Petitioner to appeal from the non-judgment entered by the Hon. Sandra Brown Armstrong U.S. District Judge. in the above entitled matter.

Previously and/or concurrently with this Application for COA, Petitioner has filed a timely Notice of Appeal.

Summary

On the date of September 5th 2007 Petitioner

Joseph Hogue, pro-per, filed a federal writ of Habeas corpus. Petitioner was then assigned to Hon. Sandra Brown Armstrong U.S. District Judge. It has been 5 months since the filing of said petition... and approximately 2 1/2 since the petition has been served. U.S. District Judge has yet to make any ruling. The Hon. Judge has yet to grant or dismiss the petition, with/without prejudice. Nor, has Hon. U.S. District Judge issued an order to show cause upon the respondent. The current case has been on pause for 5 months for reasons unknown to defendant/petitioner.

U.S. District Judge has failed to rule on all issues brought forth in current petition. Specifically claim - claim #1, claim #2, claim #3, claim #4, claim #5 and claim #6

Nature of Claims

Claim #1: Petitioner's 6th Amendment was violated and he was denied a fair trial when trial counsel failed to participate during cross-examination. Petitioner was denied counsel while he was undergoing cross examination by the prosecutor.

Claim #2: Petitioner was denied counsel during direct examination while he was on stand testifying. A violation of his 5th, 6th and

14th Amendment provided by the U.S. Con.

claim #3: Defense counsel rendered ineffective assistance when he failed to object to hearsay evidence that co-defendant Samantha Smith pled guilty to the crime of accessory after the fact for shooting at Beverly Jones house. That court erred in admitting evidence of a non-testifying co-defendant's guilty plea.


claim #4: Defense counsel rendered ineffective assistance by failing to object to the verdict and sentence for the premeditated aspect of attempted murder on the grounds that the enhancement of premeditation was not pleaded as required. In violation of Petitioner's 14th, 5th and 6th Amendments.

These are the only claims I wish to take to the ninth circuit courts.

Conclusion

Petitioner prays that C.O.A. is granted by the U.S. District Court. Petitioner has raised several obvious U.S. constitutional violations including denial of counsel at a critical stage of trial. U.S. vs. Cronk (1984) 466 U.S. 648 "Denial of counsel at a critical stage of trial cannot be harmless." It was unjustifiably denied counsel at two critical stages of my trial. I was found guilty of a crime never charged.

Appendix v. New Jersey (2000)
530 U.S. 436.

Joseph Horne
Signed: 
Date: 1/21/2008

PROOF OF SERVICE BY MAIL

(C.C.P. Sec. 101a #2015-5, U.S.C. Sec. 1746)

I, Joseph Horne, am a resident of ^{Kean Valley State Prison}~~Pelican Bay State Prison~~, in the County of Del Norte, State of California. I am over the age of eighteen (18) years and am a party to this action.

My State Prison address is: ^{K.V.S.P. P.O. Box - 5102}~~Pelican Bay State Prison, P.O. Box 7500~~, Housing Unit ~~8-8~~ Cell Number 215, ^{Delano, CA 93216}~~Crescent City, CA 95532-7500~~.

On the 24 day of January, 2008, I served the following (set forth the exact title of document[s] served):

United States District Court
Northern District of California.
Motion For Notice Of Appeal.

On the party(s) herein by placing a true copy(s) thereof, enclosed in a sealed envelope(s), with postage thereon fully paid, in the United States mail, in a receptacle so provided at ^{K.V.S.P.}~~Pelican Bay State Prison~~, ^{Delano, CA 93216}~~Crescent City, CA 95532~~, and addressed as follows:

United States District
Court Northern District
of California.
1301 Clay St Suite 400S
Oakland, CA 94612-5212

I declare under penalty of perjury that the foregoing is true and correct:

[Signature]
Inmate Signature

1/24/08
Date

Mr. Joseph Horne #V-84328
K.V.S.R. B-8/118
P.O. Box-5102
Delano, CA 93216



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Court Northern District of
California
280 South First Street, Room 2112
San Jose, CA 95113 - 3095

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